

48A C.J.S. Judges § 200

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Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

VII. Compensation and Fees

B. Amount

2. Change in Amount During Term of Office

b. Restrictions Against Altering Compensation During Term

§ 200. Applicability of rule to particular courts

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West's Key Number Digest

West's Key Number Digest, [Judges](#)  22(7)

Whether a restriction against change in compensation applies to a particular judge depends on the terms of the constitutional or statutory provision imposing it.

The terms of the particular constitutional or statutory provision are controlling on the question of which judges are subject to the restriction against increase or diminution of compensation.¹ A constitutional provision that compensation of all judges, justices, and surrogates shall not be changed during their respective terms of offices applies only to judicial officers functioning in constitutional courts² and does not apply to justices of an inferior court that is not a constitutional court.³ Federal judges on retirement from regular active service, under the statute authorizing such retirement, remain in office within the provision forbidding diminution of compensation of judges during continuance in office.⁴

Election or appointment to fill vacancy.

Whether the inhibition against a change of compensation during the term of office refers to the office or to the incumbent, the cases are not in harmony.⁵ Under the construction given to such inhibition, it has been held in some jurisdictions that it refers to the incumbent and not to the office,⁶ and an appointee to fill an unexpired term takes the salary prescribed by law at the time of his or her appointment.⁷ Hence, a judge appointed to fill a vacancy is entitled to an increase of compensation provided for prior to the existence of the vacancy but subsequent to the beginning of the term.⁸ Under other constructions given, the inhibition

applies to one who is simply supplying a vacancy in an unexpired term,⁹ but it does not apply to a judge selected to fill a newly created additional judgeship until the beginning of the term.¹⁰

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Footnotes

- 1 N.J.—*DePascale v. State*, 211 N.J. 40, 47 A.3d 690 (2012).

Del.—*Stiftel v. Malarkey*, 384 A.2d 9 (Del. 1977).

Mich.—*Taylor v. State*, 367 Mich. 256, 116 N.W.2d 848 (1962).

Ohio—*State ex rel. Wallace v. City of Celina*, 29 Ohio St. 2d 109, 58 Ohio Op. 2d 309, 279 N.E.2d 866 (1972).

Validity of amendment
A constitutional amendment permitting in-term salary increases for state judges but no in-term salary increase for local judges does not violate equal protection.

U.S.—*Ohio Municipal Judges Ass'n v. Davis*, 411 U.S. 144, 93 S. Ct. 1245, 36 L. Ed. 2d 113 (1973).
- 2 U.S.—*O'Donoghue v. U.S.*, 289 U.S. 516, 53 S. Ct. 740, 77 L. Ed. 1356 (1933).
- 3 R.I.—*Pellegrino v. Rhode Island Ethics Com'n*, 788 A.2d 1119 (R.I. 2002).
- 4 U.S.—*Booth v. U.S.*, 291 U.S. 339, 54 S. Ct. 379, 78 L. Ed. 836 (1934).
- 5 Ala.—*Ex parte Houston County*, 235 Ala. 304, 178 So. 535 (1938).

Ohio—*Bordenkircher v. Lingrel*, 29 Ohio N.P. (n.s.) 559, 1932 WL 2501 (C.P. 1932).
- 6 Ala.—*Ex parte Houston County*, 235 Ala. 304, 178 So. 535 (1938).

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- 7 Ala.—*Ex parte Houston County*, 235 Ala. 304, 178 So. 535 (1938).
- 8 Mont.—*State v. Porter*, 57 Mont. 343, 188 P. 375 (1920).
- 9 Ala.—*Pruett v. Delony*, 289 Ala. 578, 269 So. 2d 109 (1972).
- 10 Iowa—*Schaffner v. Shaw*, 191 Iowa 1047, 180 N.W. 853 (1920).

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